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KAMRA JAYA SDN BHD

v.

MULIA CEMERLANG SDN BHD

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HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[ORIGINATING SUMMONS NO: 24-185-2005]
13 FEBRUARY 2007

C ***LAND LAW:*** *Caveat - Private caveat - Extension, application for - Right to enter caveat on land - Whether defendant's caveatable interest in land expressly agreed to by plaintiff*

This was an application by the defendant by way of summons-in chambers seeking *inter alia* an order that the private caveat *vide* presentation No. 613/2005 ('private caveat') entered on certain land selected for housing development ('land'), be extended. The plaintiff and the defendant had entered into a mutual benefit agreement, cl. 2.2 of which expressly stated that the parties agreed that the defendant was entitled to select and designate the units on the land, and lodge caveats on the land in respect of the units. The defendant subsequently entered the private caveat on the land on the ground of caveatable interest as expressly contained in cl. 2.2. The plaintiff sought to remove the private caveat while the defendant's intention was to extend it. The sole issue for determination was whether the defendant, upon a true construction of cl. 2.2, had a caveatable interest entitling it to an extension thereof.

Held (allowing the application):

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(1) Given the factual background of the case, in view of the execution of the various agreements alluded to generally and the mutual benefit agreement specifically, it was plain and obvious that the plaintiff had expressly agreed to the H defendant's entry of the private caveat on the land. Clause 2.2 provided the short and simple answer to the plaintiff's application for removal of the private caveat. The defendant's caveatable interest in its units on the land was expressly agreed to by the plaintiff as stated in cl. 2.2, which was clear I and unambiguous and should be given the legal effect it deserves. The inevitable conclusion was that the argument

raised for the plaintiff was devoid of merits. In so far as the defendant's units were concerned, the answer to the above issue for determination was clearly in the affirmative. (paras 13 & 14)

For the plaintiff - Hillary D'Cruz (Avatar Singh with him); M/s Mohd Latip & Assoc

For the defendant - Justin Voon Tiam Yu (Alvin Lai with him); M/s Sidek Teoh Wong & Dennis

Reported by Suresh Nathan

JUDGMENT

Low Hop Bing J:

Application

[1] This is the defendant's application by way of summons in chambers in encl (16) seeking *inter alia* an order that the private caveat *vide* presentation No. 613/2005 ("the private caveat") entered on land held under Mukim Grant No. MCL 341, Lot 316 in the mukim of Bukit Katil, district of Melaka Tengah ("the land") be extended, and costs.

Factual Background

[2] One Haji Hashim bin Haji Pit ("Haji Hashim") the registered owner of the land had on 20 October 2000 entered into a joint venture agreement ("the JVA") with one Grobina Resorts Sdn Bhd ("Grobina") to develop the land by way of housing development upon the terms and conditions contained therein.

[3] Grobina had on 19 June 2002 *vide* deed of assignment of the JVA assigned to the plaintiff the housing development for which both Grobina and the plaintiff had applied and obtained the necessary approvals.

[4] As the plaintiff required a capital injection into its cash flow in order to successfully launch and commence the housing development, the plaintiff and the defendant entered into a mutual benefit agreement upon the terms and conditions contained therein ("the mutual benefit agreement"). Pursuant to the mutual benefit

agreement, the defendant had injected and advanced to the plaintiff a sum of RM120,000 to enable the plaintiff to pay the premium and carry out preliminary works thereon.

[5] Clause 2.2 of the mutual benefit agreement ("cl. 2.2") expressly stated *inter alia* that "the parties hereto hereby agree that Mulia Cemerlang shall be entitled to select and designate the units … (hereinafter referred to as "Mulia Cemerlang Units") and lodge caveats on the land(s) in respect of the Mulia Cemerlang Units …" (emphasis added).

[6] On 28 March 2005, the defendant *vide* Form 19B entered the private caveat on the land on ground of caveatable interest as expressly contained in cl. 2.2.

[7] *Vide* Power of Attorney No. 2498/00 registered in the Melaka High Court on 21 November 2000 and No. PT1/2001, in the Melaka Tengah Land Office on 4 April 2001 (collectively "the PA"), the plaintiff's director one Kamariah bt Jantan ("Kamariah") had on 7 June 2005 filed Form 9 at the said land office as the attorney for Haji Hashim the donor of the PA and applied to the land administrator to remove the private caveat. Form 9 was attested by advocate and solicitor Avatar Singh a/l Ram Singh.

[8] The Melaka Tengah land administrator had on 4 January 2006 served on the defendant Form 19C which is the notice of intended removal of the private caveat.

[9] *Vide* letter dated 9 January 2006 to the land administrator, the defendant objected to the notice of intended removal, on the ground that the registered owner of the land ie, one Hj Hashim, was believed to be deceased on 14 March 2005.

Issue For Determination

[10] Lengthy submissions were presented by learned counsel for the respective parties herein covering a variety of issues. Upon a careful consideration thereof, I am of the view that the sole issue for determination may be formulated as follows:

> Upon a true construction of cl. 2.2, does the defendant have a caveatable interest in order to entitle the defendant to an extension thereof?

[11] Defendant's learned counsel Mr. Justin Voon Tiam Yu (Mr. Alvin Lai with him) submitted that pursuant to cl. 2.2, the defendant has a caveatable interest and so the private caveat should be extended.

[12] Plaintiff's learned counsel Mr. Hillary D'Cruz (Mr Avatar Singh with him) argued for the removal of the private caveat on the ground that the defendant has no caveatable interest.

[13] Given the above factual background, in view of the execution of the various agreements alluded to above generally, and the mutual benefit agreement specifically, it is plain and obvious that the plaintiff has expressly agreed to the defendant's entry of the private caveat on the land. Clause 2.2 provides the short and simple answer to the plaintiff's application for removal of the private caveat. The defendant's caveatable interest in the defendant's units on the land was expressly agreed by the plaintiff as stated in cl. 2.2 which is clear and unambiguous and should be given the legal effect it deserves.

Conclusion

[14] The inevitable result is that the argument raised for the plaintiff is devoid of merits. In so far as the defendant's units are concerned, the answer to the above issue for determination is clearly in the affirmative. I therefore allow the defendant's application in encl (16) to the extent that the private caveat is extended for the defendant's units on the land, as expressly stated in cl. 2.2. Costs of this application to the defendant.